

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
Plaintiff,

NO. CR. S-89-0062 WBS GGH

v.

ORDER

MICHAEL L. MONTALVO,  
Defendant.

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The court finds Montalvo's motion to have his Rule 35(a) motion "reviewed and adjudicated only by the Article III District, and not by Magistrate Judge for Findings, Recommendations, or Conclusions" to be without merit.

The first reason asserted by Montalvo is that this a dispositive motion alleging an illegal sentence. Local Rules 72-300 and 72-302 contemplate that the magistrate judges of this court may hear dispositive as well as nondispositive motions. When dispositive motions are assigned to a magistrate judge, the appropriate procedure is for the magistrate judge to make findings and recommendations to the district judge. Such motions may ultimately be decided, however, only by the district judge.

1           The second reason asserted is that the Magistrate  
2 Judge's recent writings in this case do not reflect the  
3 "impartiality and fairness" defendant had hoped for. Those  
4 writings, which this court has read, reflect only the natural  
5 frustration which defendant and his counsel should expect from  
6 the lack of meritorious content and sheer volume of defendant's  
7 recent filings. The circumstances under which a judge may be  
8 disqualified from hearing a matter are set forth in 18 U.S.C. §  
9 455. As the Supreme has recognized,

10           First, judicial rulings alone almost never constitute a  
11 valid basis for a bias or partiality motion.... Second,  
12 opinions formed by the judge on the basis of facts  
13 introduced or events occurring in the course of the current  
14 proceedings, or of prior proceedings, do not constitute a  
15 basis for a bias or partiality motion unless they display a  
16 deep-seated favoritism or antagonism that would make fair  
17 judgment impossible.

18           Liteky v. United States, 510 U.S. 540, 554, 114 S.Ct. 1147, 127  
19 L.Ed.2d 474 (1994). The reasons asserted by Montalvo do not even  
20 come close to requiring recusal of the Magistrate Judge.

21           The third asserted reason is that the findings and  
22 recommendations of a magistrate judge are "usually given great  
23 weight by the district courts without much review." To the  
24 extent that this suggests district courts do not make their own  
25 independent determination on the matters referred to magistrate  
26 judges for findings and recommendations it is wrong.

27           In this case, the assignment of defendant's current  
28 Rule 35(a) motion to the Magistrate Judge for findings and  
recommendations will be of substantial assistance to the court,  
especially given the assigned Magistrate Judge's familiarity with  
the procedural history and issues in this case. There is no

1 persuasive reason for the court to exercise its discretion to  
2 withdraw the reference to the Magistrate Judge.

3           It might be different if this were the only case this  
4 court had to resolve. But the judges of this court have more  
5 weighted cases per judge than any other district in the United  
6 States. It might also be different if this were the only motion  
7 this defendant had asked the court to decide. But, by this  
8 court's rough count, Montalvo has filed at least 55 motions, not  
9 to mention more than 40 additional pleadings labeled "notices" or  
10 "requests," since he was sentenced in this case. If the court  
11 could not rely on the assistance of its magistrate judges in  
12 matters such as this, it would be impossible to hear and decide  
13 even a fraction of the matters which this court must resolve each  
14 year.

15           IT IS THEREFORE ORDERED that defendant's objection to  
16 the participation of the Magistrate Judge is OVERRULED, and his  
17 "motion to have defendant's motion under Criminal 35(a)(1985) to  
18 correct an illegal sentence be reviewed and adjudicated only by  
19 the Article III District Court, and not by Magistrate Judge for  
20 findings, recommendations, or conclusions" is DENIED.

21 DATED: June 22, 2007

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24 WILLIAM B. SHUBB  
25 UNITED STATES DISTRICT JUDGE  
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